

Public Chapter 361

HOUSE BILL NO. 1925

By Representative Curtiss

Substituted for: Senate Bill No. 1895

By Senators Rochelle, Kyle, Cohen, Gilbert, McNally, Crowe, Davis, Koella, Fowler

AN ACT to amend Tennessee Code Annotated, Title 8, relative to county government personnel policies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It is the legislative intent that all counties in this State have certain minimum written personnel policies in effect in order to assist in maintaining compliance with applicable state and federal laws and to facilitate accurate recordkeeping. This act is not intended to affect the present authority within counties to adopt policies in addition to those required by this act, nor is it intended to enlarge, diminish or otherwise affect the obligation to comply with current state and federal laws governing personnel matters. Nothing in this act shall be construed to impose any liability on any county government for failure to have written personnel policies in place, except as may be otherwise specifically provided by law.

SECTION 2. When used in this act, the following terms shall have the following meanings:

(a) "Base personnel policies" means the policies which are required to be adopted under this act and which are enumerated in Section 4 of this act.

(b) "County employees" means employees of the county as defined under the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., as amended.

(c) "County judge" means any judge who employs one or more county employees.

(d) "County officials" means the county trustee, register of deeds, county clerk, county judges, county clerks of courts, sheriff, assessor of property, county board of education, and the chief administrative officer of the highway or public works department.

SECTION 3. (a) Each county official shall adopt base personnel policies which shall be approved by an attorney as provided herein and filed in the office of the county clerk as provided in this section on or before December 31, 1997. The county official shall submit the base personnel policies to the attorney selected in accordance with Section 5 of this act, to be reviewed for compliance with the provisions of this act and other applicable law. In the event that any policy is not approved by such attorney, the county official may challenge the conclusion of the attorney as to such policy and have such policy reviewed by another attorney selected by the county official and paid from the

fees of the office or funds budgeted for the office or department, and the conclusion of that attorney shall be final. The county official shall submit the approved policies to the county legislative body for inclusion in the minutes of the body and filing in the office of the county clerk. Notwithstanding the foregoing, the county board of education may employ its own attorney to review and approve its policies, and the board shall submit to the county legislative body with the approved policies acceptable evidence that the policies have been reviewed and are in compliance with this act and applicable law. If any county official fails to adopt and file such policies on or before December 31, 1997, the employees of the county official shall be governed by the base personnel policies adopted by the county legislative body pursuant to subsection (d) of this section.

(b) Any county official who wishes to discontinue policies which the official has previously adopted under subsection (a) shall submit written notice to the county legislative body for inclusion in the minutes and filing in the office of the county clerk, specifying the effective date of the change. From and after the effective date, the employees of such office shall be governed by the base personnel policies adopted by the county legislative body pursuant to subsection (d) of this section.

(c) Any county official whose employees are governed by the base personnel policies adopted by the county legislative body shall have the right to adopt separate base personnel policies applicable to the employees of his or her office by filing approved base personnel policies with the county legislative body in the same manner as set out in subsection (a) of this section, at the following times:

(1) once annually, on or before November 30 each year; and

(2) within thirty (30) days after any amendment to the policies becomes effective.

Such policies shall become effective on the first day of the month following their filing in the office of the county clerk as provided in subsection (a) of this section.

(d) The county executive and the county legislative body shall provide for the adoption of base personnel policies to govern all county employees except those governed by separate base personnel policies adopted as provided in this section. The county executive shall submit to the county legislative body for approval a list of all agencies, offices and departments which will be governed by the base personnel policies; such list shall include and shall be limited to all departments, agencies and boards whose funds are handled through the office of the county trustee. The attorney selected in accordance with Section 5 of this act shall review the list for accuracy and completeness, and shall report his or her findings to the county legislative body. Upon approval of the list, the county executive shall appoint, subject to the confirmation of the county legislative body, one or more persons to develop the base personnel policies. Such persons may be members of the county legislative body, the county executive, officials or employees of agencies, offices or departments to be governed by such policies, and/or other persons having appropriate knowledge and expertise. Such persons shall be appointed and confirmed on or before October 31, 1997. The policies shall be prepared and submitted to an attorney for review as provided in Section 5 of this act, and upon approval by the attorney they shall be presented to the county legislative body for approval on or before March 1, 1998. The county legislative body shall either approve or disapprove the policies as a whole. If the policies are not approved, they shall be returned to the originating person or group for revision and resubmission to the county legislative body. When approved, the policies shall be included in the minutes of the county legislative body and filed in the office of the county clerk, and the policies shall be effective on the first day of the month following approval by the county legislative body. The final policies shall be approved by the county legislative body and filed in the minutes

in the office of the county clerk on or before May 31, 1998. Any governmental agency or entity whose funds are not handled through the office of the county trustee may, by action of the governing board of such agency or entity, adopt for such agency or entity the personnel policies filed in the office of the county clerk in accordance with this subsection.

SECTION 4. The base personnel policies required under this act are:

(1) Whether employees are entitled to paid vacation or annual leave, sick leave, or other leave, policies for accrual and use of such leave, policies for compliance with state and federal family and medical leave laws, and provisions for maintaining leave records.

(2) The compensatory time policy in effect for the office or department or a statement that no compensatory time is allowed, a statement of whether the salary received by salaried employees is intended to cover all hours worked up to and including forty (40) in a work week in offices or departments where the regular work week is less than forty (40), policies for maintaining compliance with the overtime provisions of the federal wage and hour laws, and provisions for recordkeeping.

(3) Policies on non-discrimination and sexual harassment, including a complaint procedure as required under the Federal Americans with Disabilities Act, and guidelines to enable compliance with the fair hiring requirements of the federal equal employment opportunity laws and regulations. For employees of county judges, procedures administered by the Tennessee Administrative Offices of the Courts for complaints under the Americans with Disabilities Act may be used, if available.

(4) For any employees who are required by law to be tested, policies and procedures for drug and/or alcohol testing.

SECTION 5. The county executive shall retain an attorney, subject to confirmation of the county legislative body, to review the base personnel policies for compliance with the provisions of this act and other applicable law. The county executive may, but is not required to, retain the county attorney in such capacity. The compensation of the attorney shall be established by the county legislative body, and shall be paid from the county general fund.

SECTION 6. Once adopted and approved as provided in this act, personnel policies may be amended, modified, enlarged or repealed at any time by the same process used for original adoption. Any and all personnel policies governing county employees shall be subject to change at any time, and shall not give rise to any contractual rights or obligations between the county and its employees.

SECTION 7. Each county official and each department head within the county is responsible, with respect to the employees of that office or department, for:

(1) ensuring that each employee under his or her direction has received a copy of the personnel policies in effect for that office, including a statement that nothing in the policies is intended to create a contract of employment or to affect the employment-at-will status of county employees, and a statement for each employee to sign acknowledging receipt of a copy of the policies for that employee's office or department and acknowledging that the employee understands that subsequent amendments will be on file at the office of the county clerk;

(2) furnishing to each employee a copy of Tennessee Code Annotated, Section 39-16-504, relative to falsifying, destroying, or tampering with governmental records;

(3) maintaining all required personnel records, including but not limited to the form I-9 required under federal immigration laws and all wage and hour records required under state or federal law, unless such records are maintained in a central payroll office within the county; and

(4) ensuring that all posters and other employee notifications required by the Federal Fair Labor Standards Act, the Family and Medical Leave Act, applicable equal employment opportunity laws, and other applicable state or federal laws have been posted or otherwise given to employees.

SECTION 8. Elected or appointed officials, boards and department heads shall retain their present authority to make decisions and adopt policies which are not in conflict with the provisions of this chapter, including but not limited to matters concerning hiring, compensation, promotions, transfers, layoffs, discipline, termination, and other employment matters for the employees of their respective offices. Nothing in this act shall be construed as authorization for establishing systems of seniority, tenure, or classified service, nor for creating contracts of employment or establishing the terms thereof. Nothing in this act or any of the policies adopted pursuant to this act shall be construed to affect the employment-at-will status of any county employee or otherwise create any contractual obligation on the part of the county as employer.

SECTION 9. If a court finds a county liable as a result of acts or omissions by any official or employee in connection with the requirements of this act or any policies adopted pursuant to this act, then the county shall have a right of action for reimbursement against the official or employee whose conduct resulted in liability for the county not covered by insurance, where the conduct of the official or employee was intentional and knowing and constituted illegal behavior in the workplace. For purpose of this section, the words "intentional" and "knowing" have the same meanings as defined in Section 39-11-302. An official's or employee's conduct shall not constitute knowing or intentional illegal conduct in the workplace if the conduct was based on the written advice or opinion of the county attorney or the official's or employee's legal counsel.

SECTION 10. In order to enforce the provisions of this act, the county executive is authorized to retain the county attorney, or an attorney hired pursuant to Tennessee Code Annotated, Section 5-5-106, to seek mandamus to compel compliance as provided in Tennessee Code Annotated, Section 5-1-107, and additionally may pursue any and all other remedies available at law or in equity.

SECTION 11. The provisions of this act are intended to supersede any conflicting provisions of any general laws or private acts, provided, however, that this act shall not apply to any county with a population over eight hundred thousand (800,000) or any county which has adopted a metropolitan form of government.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. No expenditure of public funds pursuant to this act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 United States Code 2000d.

SECTION 14. This act shall take effect on July 1, 1997, the public welfare requiring it.